IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 33313 of 2006(N)

AGAINST THE ORDER DATED 29/07/2006 IN EP 1429/2003. IN OS.158/1999 of PRL.MUNSIFF COURT,THRISSUR
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PETITIONER:

M.J.PAULSON, S/O.MURIYADAN JOHNY,
AVINISSERY DESOM, THRISSUR TALUK.

BY ADV. SRI.JIJO PAUL

RESPONDENT:

SUBERBAN CHIT FUNDS (P) LTD.,
THRISSUR.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.HARISH GOPINATH
SRI.V.VINAY MENON
SRI.KIRAN SANKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.33313/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE OBJECTION FILED BY THE PETITIONER IN EP. NO.1429/04 IN OS. NO.158/99 DT. 21.44.04.

EXT.P2:- COPY OF THE PROOF AFFIDAVIT FILED BY THE PETITIONER IN EP. 1429/03 IN OS. NO.158/99 BEFORE THE MUNSIFF COURT, THRISSUR DT.5.11.05.

EXT.P3:- COPY OF THE RECENT TELEPHONE BILL OF THE TELEPHONE NO.2351450 IN THE NAME OF SMT.THRESIAMMA ANTONY DT. 7.11.06.

EXT.P4:- COPY OF THE PETITION IN IP. NO.33/06 FILED BY THE PETITIONER BEFORE THE COURT OF SUBORDINATE JUDGE, THRISSUR DT. 1.12.06.

EXT.P5:- COPY OF THE ORDER DT. 29.7.06 IN EP. NO.1429/03 IN OS. NO.158/99 OF THE COURT OF PRINCIPAL MUNSIFF OF THRISSUR.

EXT.P6:- COPY OF THE DISCHARGE SUMMERY OF THE SON OF THE PETITIONER ISSUED BY THE THRISSUR HEART HOSPITAL LTD., DT. 20.3.06.

EXT.P7:- COPY OF THE ULTRA SOUND EXAMINATION REPORT OF THE PETITIONER DT. 7.1.06 ISSUED BY JUBILEE MISSION MEDICAL COLLEGE AND RESEARCH INSTITUTE, THRISSUR.

EXT.P8:- COPY OF THE MEMO DT. 9.11.07 EVIDENCING THE PAYMENT MADE BY THE PETITIONER TO THE COUNSEL APPEARING FOR THE RESPONDENT/DECREE HOLDER IN THE COURT BELOW.

/TRUE COPY/

P.S. TO JUDGE

tss

M.N.KRISHNAN, J

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W.P.(C) No.33313 OF 2006

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Dated this the 15th day of November 2007

JUDGMENT

This writ petition is filed seeking to set aside Ext.P5 order. By the said order, the court below directed issuance of arrest warrant to respondents 3 and 1. I had carefully gone through Ext.P5 order. There is not even a one line discussion regarding the means of the 1st respondent in the execution petition. Learned counsel for the petitioner has pointed out to me the contentions raised by him. I am also informed that his client was examined as a witness and was cross examined. But, unfortunately the court below has not dealt with the evidence at all. Under Section 51 of the Code of Civil Procedure it is the duty of the decree holder to establish that the judgment debtors after the decree had the means to pay and had refused to pay the amount. It is also laid down by the decisions of the Apex Court that when the civil liberty of a person is affected, there must be sufficient and satisfactory evidence. Here, it is not discussed at all.

Therefore the order impugned is set aside and the matter is remitted back to the executing court with a direction to consider the matter afresh

and in case of necessity to permit the decree holder as well as the judgment debtors to adduce further evidence and decide the matter in accordance with law after definitely entering into a finding regarding the means of the judgment debtors.

Parties are directed to appear before the executing court on 18.12.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-